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Biden Protects Resources That Provide Healthcare for Delaware Children

Attorney General acts to ensure Delaware continues to be primary beneficiary of A.I. duPont Trust; Attempts to lessen Delaware's influence cited in filing

Wilmington – Delaware Attorney General Beau Biden filed an action in a Florida court Monday asking a judge to order the trustees of the four billion-dollar Alfred I. duPont Testamentary Trust to adhere to Mr. duPont's clear intent that Delaware children and elderly be the ultimate beneficiaries of his trust.

The filing alleges that the Trust has deviated in several important respects from the clear directions that Mr. duPont laid out in his Will, including the governance structure of the Nemours Foundation, and how money is distributed from the Trust to the Foundation and, ultimately, to beneficiaries in Delaware. Biden is asking the Court to enter a declaratory judgment about the proper accounting and governance of the Trust, and is seeking other remedies to ensure that Delaware residents receive the benefits that Mr. duPont intended to leave as his legacy.

"This case is about ensuring that Mr. duPont's clear intent is followed and that Delaware's interests are protected," Biden said. "Because of Mr. duPont's vision and generosity, generations of Delaware children have benefitted from the care at the hospital that bears his name and the Nemours clinics. Mr. duPont determined that Delaware's children and elderly were to be the primary beneficiary of his trust, and my office is going to make sure that vision continues to be carried out."

Alfred I. duPont, who was a vice president at the DuPont Company before moving to Florida, died in Jacksonville, Florida in 1935. He left the vast majority of his fortune to the Trust, which is now valued at more than \$4 billion. His Will instructed his trustees to create the Nemours Foundation to care for children and the elderly. The Nemours Foundation was established in 1936 and is one of the largest children's health care systems in the country. The Nemours Foundation treats more than 200,000 children annually, and employs approximately 4,400 people in Delaware, Pennsylvania, New Jersey, and Florida.

Mr. duPont intended for the Nemours Foundation's main focus to be on Delaware, specifying in his Will that "first consideration, in each instance, (be) given to beneficiaries who are residents of Delaware." The Will also directs that Nemours' governing body consist of a majority of Delawareans.

Biden filed his pleading in the Duval County Circuit Court in response to Mr. duPont's trustees' request that the Court allow it to split the Trust for tax purposes. The trustees are also seeking the Court's approval for a host of changes to the governance structure and accounting procedures of the Nemours Foundation, as well as changes to the removal process for the trustees. Earlier this year,

the Court granted Biden's motion requesting that the Department of Justice be allowed to participate in the proceedings as a representative of the Delawareans who are the ultimate beneficiaries of the Trust.

Specifically, Biden's complaint alleges that the trustees have violated Mr. duPont's intent (and by extension Florida law) by:

- Shifting the Trust's primary focus away from Delaware's beneficiaries and toward Florida. Mr. duPont was clear in his Will that Delaware was to receive "first consideration" for the charitable contributions made by the Nemours Foundation.
- Restructuring the Nemours Foundation's governing body in a way that dilutes Delaware's influence and violates Mr. duPont's instruction that the Foundation be controlled by a five-member Board of Managers, at least three of whom live in Delaware. Instead, the trustees have proposed a governance structure where Delaware would have a majority only on a state-specific Delaware Board of Managers, which would be subject to the authority of a Board of Directors that answers to the trustees.
- Improperly calculating and accounting for Delaware's distributions from the Nemours Foundation and the distributions from the Trust to the Foundation. The Will specifically states that the trust's first priority is to maintain the Nemours Mansion and Gardens (Mr. duPont's home in Delaware) and the maintenance is to be paid off the top before the annual proceeds are distributed. In 2009, the Trust completed a multi-year renovation to restore the mansion and grounds to "a grand French neoclassical home, built in 1910 in the manner of great homes such as Versailles and Blenheim Palace." The costs were charged completely to Delaware's allocation instead of coming out of the trust's principal as called for in Mr. duPont's Will. Delaware was charged \$72 million over those five years for the work on the mansion and grounds. Had the renovation costs been properly allocated by the Trust, Delaware's portion would have been cut in half and the State would have received an additional \$36 million to be spent on care for children and the elderly. In another example in the complaint, \$102 million came out of Delaware's allocations from 2005 to 2010 for "Corporate and Shared Services," but just more than \$19 million was charged to Florida and nothing appears to have been charged to Pennsylvania and New Jersey.
- Improperly calculating and accounting for Delaware's distributions from the Nemours Foundation and the distributions from the Trust to the Foundation.
- Adopting several changes to the Trust without first notifying Delaware and/or without including Delaware as a party in the legal proceedings.
- Making the Nemours Mansion and Gardens difficult for the public to visit—for example, by denying access to children under 12. Mr. duPont's cousins – Henry Francis DuPont (Winterthur) and Pierre S. DuPont (Longwood Gardens) – built homes and then left the properties to be used for the public good as well. For the year 2010, Winterthur had 116,000 visitors, and Longwood Gardens had 876,000. By contrast, Nemours had only 21,000 visitors in 2010. No children under 12 are allowed and a maximum 48 visitors are allowed at any one time on the 222-acre property.

"Delaware has experience with the duPonts building homes with the intent of turning them over to the benefit of the public," Biden said. "Alfred I. duPont wanted the mansion to be for the public good. Few Delawareans have seen Nemours, but the other mansion and gardens are part of the fabric of our state. This shows that the current Nemours governing scheme is not sensitive to Delaware residents."

To remedy the harm that Delaware beneficiaries have already suffered as a result of the trustees deviating from the conditions of Mr. duPont's Will and violating Florida law – as well as to guard Delaware's interests going forward – Biden is asking the Court to enter declaratory relief regarding the

structure of the Trust going forward and relief to make up for any shortfalls in Delaware's distributions for past years. The pleading also asks the Court to:

- Make sure that the highest governing body that controls the Nemours Foundation be made up by three-fifths (60%) Delaware residents, whether such body is labeled a Board of Managers or Board of Directors, such that no distributions be made outside of Delaware except with the prior consent of that governing body.
- Provide the Delaware Attorney General notice of any subsequent proceeding in which any party attempts to change the terms of the Trust.
- Provide the Delaware Attorney General a full accounting of the Trust's income and the value of its assets from 2005 to 2011, as well as all of the expenditures related to the Nemours Mansion and Gardens, and all disbursements made to beneficiaries of Delaware, and all other distributions.
- Pay for all renovations to the Nemours Mansion and Gardens out of the Trust's principal, as Mr. duPont intended, not from the annual income distributed to Delaware.
- Ensure the Nemours Mansion and Gardens are open and accessible to the public, including children, in accordance with the testamentary intent of Mr. duPont.

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